No. 175

In the Supreme Court of the United States

OCTOBER TERM, 1942

INTERSTATE COMMERCE COMMISSION ET AL.,
APPELLANTS

v.

INLAND WATERWAYS CORPORATION ET AL.,
APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE SECRETARY OF AGRICULTURE OF THE UNITED STATES

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OPINION BELOW

The findings of fact and conclusions of law of the district court (R. 1663–76) are reported in 44 F. Supp. 368.

JURISDICTION

The decree of the district court was entered April 16, 1942 (R. 1677–78). Petition for appeal was filed on May 21, 1942 (R. 1679–80) and was allowed on the same day (R. 1691–92). The jurisdiction of this Court is conferred by 28 U. S.

C. 1940 ed., secs. 47, 47 (a), 345. Probable jurisdiction was noted on October 12, 1942 (R. 1738).

QUESTION PRESENTED

The principal question presented is whether an order of the Interstate Commerce Commission approving the cancellation of reshipping rates, and the application of the higher local rates, on the reshipment by rail from Chicago to eastern destinations of grain arriving in Chicago by water over the Illinois Waterways, and continuing such reshipping rates as to grain arriving in Chicago by rail or by lake, is in accordance with law.

The district court, in entering its decree enjoining the operation of the order of the Commission, declared the order to be unlawful for the reason that it "discriminates against water competition by the users of barges" on the Illinois Waterways (R. 1676).

THE STATUTES INVOLVED

I. GENERALLY

The case involves the application of certain provisions of the Interstate Commerce Act (Act of February 4, 1887, ch. 104, 24 Stat. 379), as amended from time to time (49 U. S. C. 1940 ed., secs. 1–923), relating to (1) the reasonableness of transportation rates, (2) discrimination in rates as between (a) shippers, (b) places, and (c) connecting carriers, and (3) the national transportation policy to preserve the inherent

advantages of water transportation. The provisions of the act which are immediately pertinent are set forth in an appendix hereto.

The provisions of the act relating to common carriers by rail, or by rail and water (49 U. S. C. 1940 ed., secs. 1–27), and to inland waterways transportation (*ibid.* 141–157), are contained in Part I of the act. The provisions of the act relating to common and contract carriers by water (*ibid.* secs. 901–923) are contained in Part III of the act. Part III was added by the Transportation Act of 1940, which became effective September 18, 1940, except as to certain sections thereof which became effective on January 1, 1941, with power vested in the Interstate Commerce Commission to postpone the date of the effectiveness of such sections not beyond April 1, 1942 (54 Stat. 952, 49 U. S. C. 1940 ed., notes to sec. 901). The Transportation Act of 1940 also effected amendments and additions, effective September 18, 1940, to the provisions of Part I of the act relating to common carriers by rail and rail and water (54 Stat. 899–919).

II. SUMMARY OF PROVISIONS OF THE ACT RELATING TO RATES OF, AND DISCRIMINATION BY, RAIL AND WATER CARRIERS

A. COMMON CARRIERS BY RAIL AND WATER

Rail and water carriers are required to furnish transportation upon reasonable request (49 U. S. C. 1940 ed., secs. 1 (4), 905 (a)). Water carriers

may operate only upon obtaining a certificate of public convenience and necessity (*ibid.* sec. 909 (a)). Rail and water carriers are required to establish through routes with other such carriers (*ibid.* secs. 1 (4), 905 (b)). Rail and water carriers are required to make reasonable individual rates (*ibid.* secs. 1 (5) (a), 905 (a)), and reasonable through rates (*ibid.* secs. 1 (4), 905 (b)). Certain water carriers are exempt from the provisions of the act (*ibid*, sec. 903 (b) (d)).

An unreasonable rate is unlawful (*ibid.* secs. 1 (5) (a), 905 (a)). It is unlawful for any carrier by rail unjustly to discriminate by charging one person more than another person for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" (*ibid.* sec. 2), or for a rail or water carrier to subject to undue prejudice any particular person (not including the traffic of any other carrier of whatever description) or any particular place (*ibid.* secs. 3 (1), 905 (c)). It will not constitute unjust discrimination for a water carrier to make rates different from those of a rail carrier (*ibid.* sec. 905 (c)). A rail carrier is not permitted to increase rates after reduction has been made therein to meet water competition unless the Commission finds that the proposed increase rests upon changed conditions other than the elimination of water competition (*ibid.* sec. 4 (2)). Rail and water carriers are required to afford reason-

able facilities for the interchange of traffic with, and not to make any rate discrimination between, the connecting lines of other rail or water carriers (*ibid.* secs. 3 (4), 905 (d)). Such carriers are required to file with the Interstate Commerce Commission schedules of their rates (*ibid.* sec. 6 (1), 906 (a)) and cannot engage in transportation without doing so (*ibid.* secs. 6 (7), 906 (d)). The rates so filed must be strictly observed (*ibid.* secs. 6 (7), 906 (*e*)). Rail and water carriers may not make a greater charge for a shorter than for a longer haul of like kind of property over the same line or route, except as authorized by the Commission (*ibid.* sec. 4 (1)).

The Commission is empowered to correct unlawful rates, with the burden of proof upon the carrier to show that any challenged proposed new rate or proposed practice affecting an established rate is reasonable (ibid. secs. 15 (1) (6) (7), 907 (b) (e) (g)), and to establish through routes and joint rates between rail carriers, water carriers, and rail and water carriers, with reasonable differentials as between rail and water transportation (*ibid.* secs. 15 (3), 907 (d)). The Commission is especially authorized to establish proportional rates by rail, differing from the corresponding local rates, as to traffic brought to or carried from ports by common carriers by water, and this authority was given the Commission before water carriers generally were made subject to the act (*ibid.* sec. 6 (11) (b)). In considering the rates of rail or

water carriers the Commission shall give consideration to the effect of the rates on movement of traffic by the carriers for which the rates are prescribed and to the need of adequate transportation (ibid. secs. 15a (2), 907 (f)).

B. CONTRACT CARRIERS BY WATER

In order to engage in transportation, contract carriers by water must obtain a permit from, and file reasonable minimum rates with, the Commission (*ibid.* secs. 906 (e), 909 (f)). The Commission is authorized to correct any unreasonable rate (*ibid.* sec. 907 (h) (i)). Certain contract carriers are exempt from the provisions of the act (*ibid.* sec. 903 (e) (e)).

III. THE NATIONAL TRANSPORTATION POLICY TO PROMOTE WATER TRANSPORTATION

A. THE TRANSPORTATION ACT OF 1940

The Congress, in enacting the Transportation Act of 1940 (54 Stat. 899, 49 U. S. C. 1940 ed., note preceding sec. 1), made a declaration of what is known as the "national transportation policy" and enjoined the Interstate Commerce Commission so to administer the provisions of the Interstate Commerce Act as to carry out this policy. The policy, in part, is to provide for a "fair and impartial regulation of all modes of transportation" so as to "preserve the inherent advantages of each * * * to the end of developing, coordinating,

and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the commerce of the United States * * * and of the national defense."

B. INLAND WATERWAYS—INLAND WATERWAYS CORPORATION

The Congress had previously declared in the Transportation Act of 1920 (Act of February 28, 1920, ch. 91, sec. 500 *et seq.*, 41 Stat. 499; 49 U. S. C. 1940 ed., sec. 142), that it was its policy "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." The latter declaration of policy was made in connection with the requirement that the Secretary of War conduct an investigation with the object of "promoting, encouraging, and developing inland water transportation facilities." The subject matter of the investigation was (1) appropriate types of boats, (2) interchange of traffic between water carriers and rail carriers, and (3) the extent of the utilization of inland waterways in transportation.

The Congress later created the Inland Waterways Corporation to operate on inland waterways the barges and other transportation facilities then owned by the United States and to improve the inland waterways transportation system by providing navigable channels and terminal facilities

for joint rail and water service. These operations are to continue until common-carrier service on the waterways becomes available (Act of June 3, 1924, ch. 243, sec. 1 *et seq.*, 43 Stat. 360, as amended, 45 Stat. 978, 48 Stat. 968, 49 Stat. 958, 53 Stat. 1434; 49 U. S. C. 1940 ed., secs. 141–157).

The Inland Waterways Corporation Act, as amended by the Act of May 29, 1928, ch. 891, sec. 3 (e) (45 Stat. 978, 980), provided for the issuance by the Commission, on application, of a certificate of public convenience and necessity to any common carrier by water on the Mississippi and other specified rivers, and directed the Commission, upon the issuance of such certificate, to order all connecting common carriers by rail to join with the water carrier in through routes and joint rates. The Commission was also directed, in issuing such an order, to fix reasonable minimum differentials between all-rail rates and joint rates in connection with the water service. Section 3 (e) of the Act of May 29, 1928, was repealed by section 320 (e) of the Transportation Act of 1940 (54 Stat. 898, 950), with the proviso, however, that any certificate of public convenience and necessity issued as aforesaid shall continue in effect as though issued under provisions of section 309 of the Interstate Commerce Act as amended (49 U. S. C. 1940 ed., sec. 909), and that the through routes and joint rates put into effect pursuant to

the provisions of said section 3 (e) shall be considered as having been put into effect pursuant to the provisions of the Interstate Commerce Act as amended.

C. THE PANAMA CANAL ACT

The Congress, long before making provision for an inland waterways transportation system and bringing water carriers under the provisions of the Interstate Commerce Act, manifested its interest in transportation by water in the enactment of the Panama Canal Act of August 24, 1912, ch. 390, sec. 11, 37 Stat. 560, 568. The act conferred upon the Interstate Commerce Commission a limited jurisdiction over transportation by rail and water through the Panama Canal, or otherwise, where such transportation is carried on by common carrier or carriers, (a) to establish physical connection between the lines of the rail carrier and the dock of the water carrier; (b) to establish through routes and maximum joint rates; and (c) to establish proportional rates by rail to and from the water ports. It declared that proportional rates meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to or carried from the port by a common carrier by water. The Commission was also authorized to require a rail carrier not to discriminate as between water carriers in arrangements for ship-

ments to foreign countries from the same port. The orders of the Commission pursuant to the act were required to be made only upon formal complaint or in proceedings instituted by the Commission. The act has been amended from time to time, and, as amended, is codified as part of the Interstate Commerce Act in 49 U. S. C. 1940 ed., sec. 5 (14) (15) (16); sec. 6 (11) (12), and sec. 51.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION INVOLVED

The order of the Interstate Commerce Commission involved in this case was issued December 1, 1941, in a proceeding entitled "Investigation and Suspension Docket No. 4718—Grain Proportionals, Ex-Barge to Official Territory." The order of the Commission, together with its report of findings, and the dissenting report of four of the Commissioners, including Chairman Eastman, is reported in 248 I. C. C. 307 (R. 47–76, 77). The Commission's order and report of findings were made upon reconsideration of the prior order and report of findings of Division 2 of the Commission, dated July 31, 1941, reported in 246 I. C. C. 353 (R. btn. 18–19). The Commission modified, in certain respects, the report of the findings of Division 2 and made the report a part of its order of December 1, 1941.

STATEMENT OF CASE

I. PROCEEDINGS BEFORE THE INTERSTATE COMMERCE COMMISSION [1]

A. GENERALLY

The proceedings before the Commission took place under sec. 15 (7) of the Act (49 U. S. C. 1940 ed., sec. 15 (7)) which authorizes the Commission, with or without complaint, to hold a hearing concerning the lawfulness of any proposal for a new rate or for a new practice affecting an existing rate, and to make an appropriate order in reference thereto. The Commission is also given a limited power of suspension of any schedule containing the proposed rate or practice. The burden is upon the carrier to show the reasonableness of the proposal.

In this case, rail carriers proposed, as to grain which is shipped into Chicago by water over the Illinois Waterways, the cancellation of the reshipping rates and the application of the existing higher local rates, on the reshipment of such grain by rail from Chicago to eastern destinations in central and trunk-line territories, and that such reshipping rates should continue in effect as to

[1] The report of the Commission by Division 2, as published in 246 I. C. C. 353, is frequently referred to herein. The facts set forth in the report are, with few exceptions, not in dispute. The report, as inserted in the Record between pages 18 and 19, is not page-numbered for the Record.

grain which is shipped into Chicago by lake or by rail.[2] Traffic on the Illinois Waterways is by barge. The in-bound traffic in grain to Chicago will be hereinafter referred to as ex-barge, ex-lake, or ex-rail traffic, as the case may be.

The new schedules were to become effective October 15, 1939 (R. 48). Upon the filing of protests, the Commission suspended operation of the schedules and instituted a hearing to determine the lawfulness thereof (R. 15–18). The suspension continued until May 15, 1940, on which date the suspension power of the Commission became exhausted. Thereafter, the carriers voluntarily suspended the tariffs pending the determination of the matter before the Commission (R. 48; 246 I. C. C. 353, 354).

B. THE PROPONENTS AND THE PROTESTANTS

The proposal to cancel the reshipping rail rates on the ex-barge grain was made by the Baltimore and Ohio Railroad Company and other eastern rail carriers by whom the rates are maintained. The Alton Railroad Company and other western rail carriers, competing with ex-barge grain,

[2] The proposal covers grain and grain products and by-products reshipped from Chicago and other related rate-break points to central, trunk-line, and New England territories (246 I. C. C. 353, 354, R. btn. 18–19). In this brief, reference will be made to grain only, which is the dominant commodity, and to the City of Chicago only, which is the dominant rate-break point, and all references herein to trunk-line territory are meant to include New England territory also.

appeared in support of the proposal. Appearances in support of the proposal were also made by others, including the Indianapolis Board of Trade and producers and handlers of grain which is shipped into Chicago by rail (R. 48, 209–213; 246 I. C. C. 353, 354, 357–358, 362–364).

The proposal was protested by many persons, including Cargill, Inc., and other grain merchants in Chicago, some of whom had invested large sums of money in connection with the handling of barge grain; the Finnegan Grain Corporation, a dealer in ex-barge grain, the Illinois Agricultural Association, the Mississippi Valley Association, and the Secretary of Agriculture of the United States. Many farmers whose grain is transported by barge also testified in opposition to the proposal (R. 48, 209–213; 246 I. C. C. 353, 355, 361).

The only barge line formally to protest in the hearing before the Examiner for the Commission was the Federal Barge Lines, which is operated by the Inland Waterways Corporation, pursuant to the provisions of Sections 141–157, Title 49, U. S. C. 1940 ed. (R. 210, 212, 1208–52; 246 I. C. C. 353, 354, 362, 376). This protestant is a common carrier by water, operating by barge on the Mississippi and Missouri Rivers and the Illinois Waterways from New Orleans, Louisiana, Kansas City, Missouri, and other points to Chicago, Illinois, serving intermediate points (R.

1209–10). The proprietor of the Mechling Barge Line, which line operates barges on the Illinois Waterways from points in Illinois to Chicago, appeared as a witness against the proposal (R. 908–91; 246 I. C. C. 353, 358). Whatever its status at the time of the hearing, this line has since been recognized by the Commission as a common carrier by water (R. 1721–24). The Transportation Act of 1940, subjecting water carriers to the jurisdiction of the Interstate Commerce Commission, was enacted during the course of the proceedings before the Commission. Each of these barge lines filed its barge rates with the Commission after the hearing but before the decision, on reconsideration, of the Commission sitting as a whole (R. 5, 95, 165, 1668).

C. THE INTERVENTION OF THE SECRETARY OF AGRICULTURE OF THE UNITED STATES

The Secretary of Agriculture of the United States became a party to the proceeding before the Commission (R. 48; 246 I. C. C. 353, 364) pursuant to Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1940 ed., sec. 1291, which provides that in any case before the Commission involving a complaint of a rate or practice relating to the transportation of farm products and affecting the public interest, the Commission shall make the Secretary a party to the proceeding, upon his application for that purpose, with all the rights of a party, including the right to invoke and pursue

original and appellate judicial proceedings involving the Commission's determination. The Secretary is also authorized by the same section of the Act to make to, and prosecute before, the Commission complaints in respect to rates and practices relating to the transportation of farm products.

D. THE RESPECTIVE CONTENTIONS OF THE PROPONENTS AND THE PROTESTANTS

1. *The contentions of the proponents.*—The carriers sought, before the Commission, to support the proposal to cancel the reshipping rates on ex-barge grain upon the grounds that such rates (1) result in loss of tonnage to the rail carriers, (2) disturb the grain-rate structure in the territory generally, and (3) result in discrimination against rail shippers of grain in the origin territory in Illinois. The western carriers also contended that the reshipping rates had never been properly applicable to the ex-barge grain (R. 214; 246 I. C. C. 353, 364–365).

The primary concern of the carriers is the loss of tonnage due to barge competition. The eastern carriers now have their share of the ex-barge grain reshipped from Chicago. It costs them no more to transport this grain than any other grain. The cancellation of the reshipping rates on the ex-barge grain would render it economically impossible to reship such grain by rail from Chicago. The eastern rail carriers would, therefore, lose the

ex-barge tonnage, except insofar as it may be regained by them through such an increase in volume of grain shipped into Chicago by the western rail carriers as is contemplated would result from the cancellation of reshipping rates on the competitive ex-barge traffic (R. 269, 281, 1068, 1073). It appears, therefore, that the concern over the loss of tonnage is principally that of the western rail carriers. The barge competition on the Illinois Waterways has cut severely into the tonnage of the western rail carriers from Illinois origins, and such carriers complain that their efforts to meet the barge competition by special intrastate rates on corn, the principal commodity transported by barge, has been nullified by the application of reshipping rates on the ex-barge grain (246 I. C. C. 353,364).

The interest of the eastern rail carriers plainly springs from the feeling on their part that all rail carriers should stand together in an effort to get as much business for the rails as they can. Their position in this respect, as affecting the instant case, is clearly stated by the only representative of the eastern carriers to testify. The testimony is to the effect that: "We are not in love with water transportation * * * and we believe that we are entitled to that grain business" (R. 281), and the purpose of the new schedules is to "drive this business off the water and back onto the rails where it belongs" (R. 266–267). As to ex-lake traffic, in respect to which the

reshipping rates would be continued, it is stated that this traffic on the whole affords the rails generally as long a haul as they would otherwise have (R. 1068).

Division 2 of the Commission sustained the contentions of the proponents (246 I. C. C. 353) and the Commission, sitting as a whole, sustained all contentions except the contention that the reshipping rates had never been properly applicable to the ex-barge grain (R. 51–52; 248 I. C. C. 307, 309).

2. *The contentions of the protestants.*—The protestants contended that the adoption of the proposal would contravene the national transportation policy to preserve the inherent advantages of water transportation (49 U. S. C. 1940 ed., note preceding sec. 1) and would also contravene the following sections of the Interstate Commerce Act relating to transportation rates and practices: section 1 (5) (a), making an unreasonable rate unlawful; section 2, making it unlawful to charge one person more than another for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions"; section 3 (1), making it unlawful unduly to prejudice any particular person or place; and section 3 (4), forbidding common carriers by rail from making any discrimination in their rates against the connecting lines of other common carriers, including carriers by water. It was also contended that the Commission should

give effect to section 6 (11) (b) of the act, as added by the Panama Canal Act of 1912 (49 U. S. C. 1940 ed., sec. 6 (11) (b)), relating to the authority of the Commission to establish proportional rail rates on ex-water traffic by common carriers.

The Commission approved the proposal over the contentions of the protestants, without, however, making any findings in respect to some of the contentions (246 I. C. C. 353; 248 I. C. C. 307).

E. THE FEDERAL IMPROVEMENT OF ILLINOIS WATERWAYS AND THE TRAFFIC IN GRAIN ON THE WATERWAYS

The Illinois Waterways, including a portion of the Illinois River, connect the Great Lakes with the Mississippi River, and provide at low cost transportation of grain, including grain sent to Chicago for reshipment. The Federal Government took over the project from the State of Illinois in 1930. The recent navigability of the waterways has been due entirely to extensive improvements made by the Federal Government. The waterways were reopened for navigation to Chicago in 1933. It is estimated that the total cost of the improvements made by the Federal Government has been at least $60,000,000 (246 I. C. C. 353, 354–355). Private persons, including some of the protestants, have invested large sums of money in elevator facilities, and in the operation of barges, to handle grain transported on the waterways (246 I. C. C. 353, 355).

The volume of movement of grain over the waterways has steadily increased since the barge lines began to operate in 1933, and competing railroads have suffered a loss of grain tonnage as a result of the barge competition. The waterways serve an important grain-producing area. The principal grains transported by barge over the waterways to Chicago are corn, wheat, oats, and soybeans. During the seven-year period, 1933–1939, 38,096,000 bushels of corn, wheat, oats, and soybeans were transported to Chicago over the waterways. The lake and rail receipts of these grains at Chicago during the same period amounted to 39,725,000 bushels and 812,743,000 bushels, respectively. The receipts of each commodity were as follows: *Corn,* by barge, 27,694,000 bushels, by lake, 23,170,000 bushels, and by rail, 465,210,000 bushels; *wheat,* by barge, 6,975,000 bushels, by lake, 13,160,000 bushels, and by rail, 155,140,000 bushels; *oats,* by barge, 1,871,000 bushels, by lake, 3,395,000 bushels, and by rail, 140,044,000 bushels; and *soybeans,* by barge, 1,556,000 bushels, by lake, none, and by rail, 52,349,000 bushels. The 1939 receipts were as follows: *Corn,* by barge, 13,206,000 bushels, by lake, none, and by rail, 65,774,000 bushels; *wheat,* by barge, 1,957,000 bushels, by lake, 211,000 bushels, and by rail, 24,132,000 bushels; *oats,* by barge, 837,000 bushels, by lake, none, and by rail, 20,987,000 bushels; and *soybeans,* by barge, 1,076,000 bushels, by lake,

none, and by rail, 18,486,000 bushels (R. Ex. No. 19, pp. 80–87, 90, 91, introduced R. 435; 246 I. C. C. 353, 383–384).

The Federal Barge Lines, during the same period, transported grain to Chicago over the waterways from Burlington, Iowa; Leavenworth, Kansas; Kansas City, Missouri; St. Louis, Missouri; and points in Illinois, including East St. Louis, Kampville, Morris, Lacon, Peoria, Pekin, and Havana, as follows: 4,657 tons in 1933; 45,772 tons in 1934; 32,367 tons in 1935; 35,220 tons in 1936; 52,900 tons in 1937; 5,843 tons in 1938; and 43,292 tons in 1939. In 1939, the tonnage consisted entirely of wheat from East St. Louis and Kampville, Illinois, and Kansas City, Missouri (Ex. 63, R. Ex. 101, introduced R. 1210, 1252).

Corn leads all other grains in receipts at the Chicago Market, and corn is also the principal commodity transported over the Illinois Waterways. Of the 17,076,000 bushels of grain moving to Chicago on the waterways in 1939, 13,206,000 bushels were corn (246 I. C. C. 353, 383–384).

The section of Illinois served by the waterways extends approximately forty miles from the waterways and comprises about twenty-one counties. It is part of a large surplus corn producing area. Most of the corn received in Chicago by rail and all that received over the waterways originates in this area (246 I. C. C. 353, 355). The total amount of ex-barge corn recorded for reshipment from Chicago in 1939 was 13,094,962.2 bushels of

which the Mechling Barge Line carried 7,278,146.1 bushels and the Allied Barge Corporation carried 4,358,224.1 bushels. The rest was carried by other independent barge lines (246 I. C. C. 353, 357).

F. RESHIPMENT OF GRAIN FROM CHICAGO

The reshipment of all grains from Chicago is by rail and by lake in almost equal volume, although corn moves out approximately two-thirds by lake and one-third by rail (Ex. 19, R. Ex. 93–96, introduced R. 435; 246 I. C. C. 353, 383–384). The reshipment by rail is exclusively at the reshipping rail rates (R. 1371, 1578), and grain which cannot engage such rates moves out via lake (R. 721, 1522–29, 1556, 1576–77). The movement by lake may only take place during the seven months of open lake navigation. Grain transported to Chicago by barge is largely reshipped therefrom via rail and via lake (246 I. C. C. 353, 357).

G. THE GENERAL NATURE OF THE RESHIPPING RATES

A major portion of the grain which moves from the West to Chicago is, after storage there, reshipped to eastern destinations. The movement into Chicago is (a) by rail, (b) by lake over the Great Lakes, (c) by barge over the Illinois Waterways, and (d) by truck (246 I. C. C. 353, 383–384). The ex-rail traffic is mostly by common carriers on rates filed with the Commission. The ex-lake and ex-barge traffic is by common, contract,

and private carriers on rates not filed with the Commission (R. 1275, 1290–1291; 246 I. C. C. 353, 357, 358, 359, 362), except as may have been recently required of common and contract carriers under the act as amended by the Transportation Act of 1940.

The barge rates on grain generally are less than the interstate competitive rail rates on grain (246 I. C. C. 353, 356–357) and the barge rates on corn are less than the intrastate competitive rail rates on corn (ibid.). The intrastate rail rates on corn were established for the purpose of meeting, insofar as possible, the barge rates, and the corn shipped under such rail rates is not entitled to transit privilege in Chicago except upon payment of the difference between the intrastate and the interstate rail rate (246 I. C. C. 353, 356, 367).

Grain moving in to Chicago from the West moves out of Chicago to eastern destinations by rail and by lake. For the rail movement, there are reshipping rates lower than the local rail rates on grain that originates in Chicago. To engage the reshipping rates, the reshipment need not be of the identical lot of in-bound grain. The local rates are rarely applied for the reason that very little grain originates in Chicago (246 I. C. C. 353). The reshipping rail rates are applicable to all types of in-bound movement, except truck movement, and it makes no difference that the in-bound movement may be by a water carrier—common, contract, or private—not subject to the

jurisdiction of, or on rates not filed with, the Commission, or without arrangements with the outbound rail carriers for through movement (R. 1054, 1275, 1284–1291; 248 I. C. C. 307, 309). The barge lines do not have any formal arrangements with the eastern rail carriers for through movement (R. 5, 985, 1052, 1225).

The reshipping area east of Chicago is divided into territories. For the purposes of this case, reference will be made to central territory and trunk-line territory.[2] Representative points in central territory are Indianapolis, Indiana; Detroit, Michigan; Circleville, Ohio; Pittsburgh, Pennsylvania; and Buffalo, New York; and representative points in trunk-line territory are New York, Philadelphia, Baltimore, and Boston (246 I. C. C. 353, 365). The reshipping rail rates vary, of course, according to the different destinations in the East, and, as to destinations in central territory but not in trunk-line territory, they vary also as to the territory of the origin of the grain west of Chicago (246 I. C. C. 353, 365).

The origin territories west of Chicago, referable only to reshipment from Chicago to central territory, are known as (a) Northwest Territory, (b) Trans-Mississippi River Territory, and (c) Reshipping Territory (Illinois-rail). Grain which is shipped to Chicago by boat over the Great Lakes and by barge over the Illinois Water-

[2] As used in this brief, trunk-line territory means also New England territory.

ways is regarded as originating in the Northwest Territory, which is expressly stated to include "shipments which arrive by Boat Lines at Chicago, Illinois * * *", while grain is shipped to Chicago by interstate rail from points along or adjacent to the Illinois Waterways is regarded as originating in the Reshipping Territory (246 I. C. C. 353, 365, 366).

There are, therefore, four sets of reshipping rail rates out of Chicago—one for eastern destinations in the trunk-line territory irrespective of the origin of the grain west of Chicago, and three for destinations in central territory, depending upon the origin of the grain west of Chicago. The set of reshipping rates for grain originating in the Northwest Territory is generally three cents higher, as an equalization factor, than the set of reshipping rates for grain originating in the Trans-Mississippi River Territory. The level of rates for grain originating in the Reshipping Territory is between the levels of rates applicable to grain originating in the other two territories. As stated above, the local rail rates eastward from Chicago on grain originating in Chicago are higher than the reshipping rail rates to the same eastern destinations[4] (246 I. C. C. 353, 365).

[4] Present and proposed tariff notes governing the engagement of reshipping rates are set forth in Exhibit No. 1 (U. Ex. pp. 1–28, introduced R. 220), and the reshipping

Rail movement, preceded or followed by water movement on rates not filed with the Commission, is frequently at reshipping; rates lower than the local rates irrespective of the type of water carrier as common, contract, or private (R. 1275–91).

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and local rates are set forth in Exhibit No. 68 (R. Ex. p. 104, introduced R. 1262). In this brief, reference will be made to the notes and rates as they are set forth in 246 I. C. C. 353 at pp. 365 and 385–388 (R. btn. 18–19). The notes are also set forth for convenient reference in the record at pp. 19–27. However, tariff notes relating to Trans-Mississippi River Territory are to be found only in Exhibit No. 1 at pp. 4–6 and 7–8.

(Table taken from 246 I. C. C. 353 at p. 365)

[Rates in cents per 100 pounds]

From Chicago, Ill., to—	Short-line distance	Separately published rate factors				Local
		Trans-Mississippi River	Northwest	Reshipping	Proportional	
		Note 30	Note 40	Note 45	Note 20	
CENTRAL TERRITORY						
	Miles	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Indianapolis, Ind	180.9	11.5	14.5	12		17
Detroit, Mich	299.5	12.5	15.5	13		17
Cadiz ville, Ohio	530.7	14.5	17.5	19		23
Pittsburgh, Pa	454	18.5	21.5	20		28.5
Buffalo, N. Y	498	18.5	21.5	30		28.5
TRUNK LINE TERRITORY						
Baltimore, Md	761		Domestic—23			31.5
Baltimore, Md	761		Export—16			24.5
Philadelphia, Pa	810		Domestic—24			32.5
Philadelphia, Pa	810		Export—16.5			25
New York, N. Y	900		Domestic—26			34.5
New York, N. Y	900		Export—17.5			27
Boston, Mass	972		Domestic—28			36.5
Boston, Mass	972		Export—17.5			28

II. THE RATE CHANGES WHICH WOULD BE MADE BY THE PROPOSAL AND THE EFFECT THEREOF ON THE VOLUME OF TRAFFIC IN SUCH GRAIN AND ON THE PRICES PAID TO PRODUCERS

The adoption of the proposal to cancel reshipping rail rates on the reshipment of ex-barge grain from Chicago would mean that the higher local rail rates from Chicago would become applicable to the reshipment of such grain by rail. It is not proposed to make any change in the inbound barge rates. The local rail rates from Chicago are higher than the reshipping rail rates therefrom by 8.5 cents to points in trunk-line territory, and by 1.5 cents to 7.5 cents to points in central territory, resulting, under the proposal, in a corresponding increase in barge-rail combination rates from points of origin to points of destination[1] (246 I. C. C. 353, 365, 366).

Grain comes to a common value at Chicago, both as to purchase price and as to selling price. The producer receives the Chicago price less the inbound transportation charge. The buyer from a Chicago merchant pays the Chicago price plus the cost of out-bound transportation. Transactions in grain are on a margin of one-quarter of a cent a bushel. Grain that cannot engage the reshipping rail rates is ineligible for transactions in grain futures. The amount by which local rail rates exceed the reshipping rail rates is such as would render reshipment at the local rates economically

[1] Rates are stated in cents per hundred pounds.

impossible,[6] and upon the adoption of the proposal the only outlet for ex-barge grain from Chicago would be via lake. There are many eastern destinations which cannot be reached by lake, and the movement by lake may only take place during the seven months of open lake navigation. The Chicago merchants, upon finding that the ex-barge grain cannot be handled with the same facility as ex-rail grain, would either cease to buy ex-barge grain, or buy the same only at a discount. The present ex-barge traffic in corn from Morris, Illinois, a representative barge point in Illinois, results in a net price to the producer of corn of 2.7 cents to 3.45 cents per bushel greater than if shipped into Chicago by rail at the interstate rail rate (R. 70–72, 721, 1522–29, 1556, 1576–77, 1635; 246 I. C. C. 353, 361, 365).

The in-bound barge rate of the Federal Barge Lines from Kansas City, Missouri, is 11.375 cents as contrasted with the competitive rail rate of 16 cents, and the in-bound barge rates of the independent barge lines,[7] including the Mechling

[6] The finding of the Commission that the proposal will not "prohibit movement by barge-rail" (R. 53) is hardly borne out by the record (R. 70–71, 1670–71).

[7] The report of Division 2 of the Commission (246 I. C. C. 353, 356–357) adopts as the barge rates of the independent barge lines the rates set forth at pp. 917 to 920 of the record and not the higher rates contained in several exhibits. Rates of the Federal Barge Lines are higher than the rates of the independent barge lines (Ex. 67, R. Ex. 102–103, introduced R. 1254; 246 I. C. C. 353, 363).

Barge Line, from points in Illinois, range from 3.30 cents to 5.125 cents as contrasted with the competitive interstate rail rates ranging from 9.5 cents to 12 cents.

The barge-rail rates to points in central and trunk-line territories, now less than the comparative all-rail rates, would, under the proposal, be higher than the all-rail rates as to points in trunk-line territory and generally lower than such rates but by reduced amounts, as to points in central territory. The present barge-rail rates are in some instances lower and in other instances higher than the local rail rates out of Chicago, while, under the proposal, they would in each instance be higher than the local rail rate by the amount of the in-bound barge rate.

The barge-rail rates under existing tariffs and under the proposed schedules may be compared with each other and with the all-rail rates and local rail rates out of Chicago by taking as examples grain transported by barge from Kansas City, Missouri, and Morris, Illinois, to Chicago, and then reshipped by rail to New York City. The present barge-rail rate from Kansas City to New York is 37.375 cents, consisting of the in-bound barge rate of 11.375 cents and the reshipping rate of 26 cents. The present combination rate is lower by 4.625 cents than the all-rail rate of 42 cents and higher by 2.875 cents than the local rail rate out of Chicago of 34.5 cents. The proposed barge-rail

rate is 45.875 cents, consisting of the in-bound barge rate of 11.375 cents and the local rail rate out of Chicago of 34.5 cents. The proposed combination rate is 8.5 cents higher than the present rate, 3.875 cents higher than the all-rail rate, and 11.375 cents higher than the local rate. The present barge-rail rate from Morris, Illinois, to New York, is 29.75 cents, consisting of the in-bound barge rate of 3.75 cents and the reshipping rate of 26 cents. The present combination rate is 5.75 cents lower than the all-rail rate of 35.5 cents and 4.75 cents lower than the local rail rate. The proposed combination rate is 38.25 cents, which is 8.50 cents higher than the present rate, 2.75 cents higher than the all-rail rate, and 3.75 cents higher than the local rate[*] (Exhibit No. 69, R. Ex. 107–117, introduced R. 1266, 1270–1271).

Under the proposal, the reshipping rail rates would continue in effect as to ex-lake and ex-rail grain. In some cases this would mean that the combination rate on ex-lake grain would continue to be less than the local rail rate from Chicago. For example, the in-bound rate on grain transported by

[*] The point of origin may be such as to make the present barge-rail rate equal to or greater than the local rate out of Chicago. This is particularly true as to the Federal Barge Lines which transports grain to Chicago from such distant points as Kansas City, Mo. Under the proposal, the barge-rail rate from any point of origin would be higher than the local rate from Chicago by the amount of the inbound barge rate.

lake from Duluth, Minnesota, to Chicago, Illinois, is 6.75 cents. The out-bound reshipping rail rate from Chicago to New York is 26 cents. The combined rate would be 32.75 cents, which is 1.75 cents lower than the local rate of 34.5 cents (R. 73, 1067; Ex. 75, R. Ex. 123, introduced R. 1283).

The present combinations of barge-rail rates from some points in Illinois are less than the rail rates from some of the rail origins in Illinois, Indiana, and Ohio, nearer to ultimate eastern destinations than is the ex-barge grain after arriving in Chicago (246 I. C. C. 353, 374; R. 215–219; Exs. 5 and 6, R. Ex. 35, 37, introduced R. 220),[9] and the present barge-rail rates are claimed to be such as to make it difficult for other markets, such as Indianapolis, to attract grain from the barge territory (246 I. C. C. 353, 364).

I. THE TARIFF CHANGES WHEREBY THE CANCELLATION OF RESHIPPING RATES ON EX-BARGE GRAIN IS TO BE MADE EFFECTIVE

The reshipping rail rates on the reshipment of grain from Chicago are now applicable to grain arriving in Chicago by barge, lake, or rail. The tariffs contain rules governing the application of the rates. It is proposed to make such changes in these rules as will cancel the reshipping rates as to the ex-barge traffic and continue the rates in

[9] The Commission held, as contended by the proponents, that this tended to break down the established through grain-rate structure from west to east (246 I. C. C. 353, 365, 374–375; 248 I. C. C. 307, 309).

effect as to the ex-lake and ex-rail traffic. This is to be done by specifically excluding all grain arriving in Chicago over the Illinois Waterways from the benefit of the reshipping rates (246 I. C. C. 353, 385–388). An exception is made as to packaged grain moving from Kansas City, Missouri, to Chicago, under rates published, prior to the hearing before the Commission, by the Federal Barge Lines (R. 1214, 1226, 1229; 246 I. C. C. 353, 388) and the central territory reshipping rates to be applied to such grain are the rates applicable to grain originating in the Trans-Mississippi River Territory (Ibid.). The only packaged grain thus transported has been alfalfa meal (R. 1230).

The tariff rules specify certain conditions under which reshipping rates may be engaged. Important among these conditions as now in effect and as proposed to be changed, are the following:

1. The exemption of in-bound water traffic from the requirement that the entire through movement shall be by rail carriers or water-and-rail carriers on filed rates continues in effect as to the ex-lake traffic. The exemption was created contemporaneously with the inauguration of the movement of grain in barges over the Illinois Waterways (246 I. C. C. 353, 368, 369). The requirement is a general one affecting the application of several other requirements (246 I. C. C. 353, 368–371).

2. The requirement that the combined in-bound rate and the out-bound reshipping rail rate shall not be less than the local rail rate, and that the

difference necessary to protect the local rate be added to the reshipping rate, continues in effect as to grain arriving in Chicago by rail only. The requirement has never been applicable to the reshipment from Chicago to points in trunk-line territory of grain arriving in Chicago by barge or by lake. The structure of existing particular rules is such as to make an apparent similar requirement in respect to the reshipment of ex-barge and ex-lake grain to points in the central territory. However, the requirement has never been observed in respect to such grain and, under the present proposal, there would be no such requirement as to grain arriving in Chicago by lake or as to packaged grain transported over the Illinois Waterways from Kansas City, Missouri, to Chicago, by the Federal Barge Lines on published rates (R. 19–27, 246 I. C. C. 353, 369).

The over-all exemption mentioned in subparagraph 1 above, whereby the in-bound water traffic is exempted from the requirement that the entire through movement shall be by rail carriers or by water-and-rail carriers on filed rates has been construed so as to make inapplicable to in-bound water traffic the requirement relating to the protection of the local rail rate out of Chicago (see 246 I. C. C. 353, 369).

3. The requirement that the rates shall be subject to transit rules and regulations, published in tariffs lawfully on file with the Commission, now

applicable to grain arriving in Chicago by barge, lake or rail, continues in effect as to the ex-lake and ex-rail grain (R. 19–27). The exemption of ex-water traffic from the requirement mentioned in subparagraph 1 above to the effect that in order to engage the reshipping rate, any through movement shall be by a rail carrier or a water-and-rail carrier on filed rates, and the inherent differences between the ex-water traffic and the ex-rail traffic, make inapplicable to the ex-water traffic any requirement of the transit rules relating to the filing of the in-bound rate, and subject such traffic to the transit rules only to the extent required to police such traffic, namely, the ascertainment of the identity of the in-bound carrier, origin, and rate (R. 51–52; 248 I. C. C. 307, 309).

J. THE DECISION OF THE COMMISSION AND ITS DENIAL OF REHEARING FOLLOWING THE ENACTMENT OF THE TRANSPORTATION ACT OF 1940

The Examiner for the Commission, after the conclusion of the hearing before him, made a proposed report in which he recommended the cancellation of the reshipping rates on ex-barge grain upon the ground that such rates had never been legally applicable. The protestants filed exceptions to the report of the Examiner as to all of its findings and recommendations, and the eastern rail carriers, who originated the proposal to cancel the reshipping rates, excepted as to that part of the report which stated that such rates

had never been legally applicable (R. 51, 246 I. C. C. 353; 248 I. C. C. 307).

The matter was submitted to Division 2 of the Commission, consisting of three Commissioners, on January 8, 1941. In its report of July 31, 1941 (R. btn. 18–19), the Division, with one Commissioner dissenting, adopted the recommendations of the Examiner (246 I. C. C. 353).

The eastern-carrier proponents and the protestants petitioned the whole Commission for reconsideration of the report of Division 2. Petition for reconsideration as filed by the proponents was confined to that part of the report which held the reshipping rates to have been legally inapplicable in the past. On December 1, 1941, the Commission made its report in which it approved the cancellation of reshipping rates. Four of the Commissioners, including Chairman Eastman, dissented. However, the whole Commission found, contrary to Division 2, that the reshipping rates proposed to be cancelled had not been legally inapplicable in the past. The Commission accordingly issued its order on December 1, 1941, vacating its prior order suspending the operation of the schedules and discontinuing the proceeding (R. 47–77; 248 I. C. C. 307).

The Commission at the same time denied the petition of the Inland Waterways Corporation (Federal Barge Lines) for a further hearing. Later on January 21, 1942, the Commission also denied the petition of the Mechling Barge Line

for leave to intervene and for rehearing and reconsideration (R. 90–123, 1724–1725). The petitions on the part of these two barge lines recited that the Transportation Act of 1940 making common carriers by water subject to the jurisdiction of the Commission had become effective during the course of the proceedings and that they had filed their port-to-port grain rates with the Commission (R. 28–46, 90–123). The Mechling Barge Line applied to the Commission on May 29, 1941, for a certificate of public convenience and necessity under Section 309 (a) of the Act, authorizing it to continue operation as a common carrier by water in the transportation of grain and soybeans on the Illinois Waterways. The application was granted by Division 4 of the Commission on November 6, 1941, and a certificate was accordingly issued on the same day (R. 121–123, 1721–1724).

K. THE DISSENTING REPORT OF CHAIRMAN EASTMAN OF THE COMMISSION

In the dissenting report of Chairman Eastman (R. 55–76; 248 I. C. C. 307, 312–324) reference is made to the frequency in practice over a period of years of applying, with the approval of the Commission, reshipping rates, lower than the corresponding local rates; "to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers" (R. 57–

58; 248 I. C. C. 307, 313), quite apart from the authority conferred upon the Commission by the Panama Canal Act to establish proportional rail rates for ex-water traffic by common carriers (R. 61; 248 I. C. C. 307, 315). The view is expressed that such reshipping rates are not in contravention of section 2 of the act which provides that a carrier shall not charge one person more than another for like service, for the reason that "there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto" (R. 65; 248 I. C. C. 307, 317) and that "the practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom" (R. 68; 248 I. C. C. 307, 319).

The Chairman concludes, however, that the proposal to *cancel* the reshipping rates on grain and to *apply* the higher local rates to such grain was unlawful under sections 2 and 3, if not also under section 1 of the act (R. 72; 247 I. C. C. 307, 321–322). He takes exception to the finding of the majority of the Commission that the proposal will not have the effect of prohibiting the reshipment of such grain by rail, and in this connection states that, in view of the common value to which all

grain comes in Chicago, the effect of the proposal would be to confine the outlet of the ex-barge grain to local consumption in Chicago or to reshipment therefrom via lake during the limited season of open lake navigation, with consequent reduction in the prices paid to producers for such grain (R. 70–72; 248 I. C. C. 307, 320–321). He, therefore, regards the proposal as unlawful for the following reasons: (1) The suggestion is made that upon the cancellation of the reshipping rates on ex-barge grain the higher outbound local rail rates might be regarded as unreasonable under section 1 of the act, particularly in view of the long period during which the reshipping rates have been in effect (R. 72; 248 I. C. C. 307, 321–322). (2) As to section 2 of the act, it was said that while reshipping rates "may lawfully vary with the length and nature of the haul to or from the point beyond," as held by the majority of the Commission, the rule of variance, if to be followed at all, "must be equally applied." In this connection, reference was made to the fact that the reshipping rates now apply to ex-barge, ex-lake, and ex-rail traffic irrespective of the distance of the point of origin from the reshipping point and that "certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain

whatever the point of origin or length of the inbound haul" (R. 72–75; 248 I. C. C. 307, 322–323). (3) For similar reasons, the shippers of ex-barge grain would be unduly prejudiced in violation of section 3 (1) of the act which condemns the subjection of any particular person or place to any undue disadvantage in any respect whatever (R. 75; 248 I. C. C. 307, 323).

II PROCEEDINGS IN THE DISTRICT COURT

Cargill, Inc., and other Chicago protestants instituted an action (No. 3714) in the district court to set aside, and enjoin the operation of, the order of the Commission (R. 133–193). An action for the same purpose (No. 3725) was instituted by the Inland Waterways Corporation which operates the Federal Barge Lines (R. 1–78). The United States of America and the Baltimore and Ohio Railroad Company and other eastern rail carriers were named as defendants in each of these cases (R. 1, 135), and the Interstate Commerce Commission was named as defendant in action No. 3725 (R. 1). These actions were brought under 28 U. S. C. 1940 ed., secs. 41 (28), 43, 44, 45, 45 (a), 46, 47, and 48 (R. 2, 136).

The Secretary of Agriculture of the United States, acting pursuant to Section 201 of the Agricultural Adjustment Act of 1938 (7 U. S. C. 1940 ed., 1291), intervened as plaintiff (R. 87–89, 201–203, 208–209, 1715), and the Alton Railroad Company and other western rail carriers intervened

as parties defendant (R. 127–131, 204–207, 1716), in each of the actions. A. L. Mechling, doing business as the A. L. Mechling Barge Line, intervened as plaintiff in action No. 3725 (R. 90–124, 132, 1714). Answers were filed by all defendants (R. 80–87, 124–131, 195–201, 204–207). The actions were consolidated by an order of the court (R. 208, 1715).

The consolidated cases came on for final hearing before a district court of three judges convened pursuant to Section 47 of the United States code, 1940 ed., Title 28 (R. 1713). The record before the Commission was received in evidence and the cases were argued by the several parties. The court, after making its findings of fact and stating its conclusions of law (R. 1663–1676), entered a final decree (R. 1677–1678) setting aside, and enjoining the operation of, the order of the Commission. In stating its conclusions of law the court held that "The order of the Interstate Commerce Commission discriminates against water competition by the users of barges" (R. 1676). In its findings of fact, the court stated that there was no evidence in the record to support the finding of the Commission that the proposed schedules would not prohibit the rail reshipment of ex-barge grain (R. 1670–1671). It also found that the Commission did not give consideration to the national transportation policy to preserve the advantages of water

transportation as expressed in the Transportation Act of 1940, and that the order would have the effect of nullifying that policy (R. 1674, 1675).

III. PARTIES ON APPEAL

The appellants herein are the Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, and other eastern rail carriers, and the Alton Railroad Company, and other western rail carriers. The appellees are the Inland Waterways Corporation (which operates the Federal Barge Lines), Cargill, Incorporated, and other Chicago grain merchants, the Secretary of Agriculture, and A. L. Mechling, doing business as the A. L. Mechling Barge Line.

SUMMARY OF ARGUMENT

A. Tariff schedules, as proposed by the appellant eastern rail carriers, with the support of the appellant western rail carriers, and approved by the Commission, cancel reshipping rail rates out of Chicago on grain transported to Chicago over the Illinois Waterways, and render applicable to the reshipment of such grain the higher local rail rates. The reshipping rates would continue in effect as to grain arriving in Chicago by lake over the Great Lakes and by rail, including the interstate rails which compete with the grain traffic on the Illinois Waterways. Grain is shipped into Chicago over the Illinois Waterways by barge. The cancellation of the reshipping rates on the ex-

barge grain would divert traffic in grain from the Illinois Waterways to the competitive interstate rails. The rate discrimination thus brought about against the appellee barge lines as common carriers by water on rates filed with the Commission is unprecedented in prior Commission action.

B. The discrimination is such as to involve several sections of the act relating to the unreasonableness of rates, and discrimination and prejudice therein, but this argument will be confined to that aspect of the case which relates to section 3 (4) of the Interstate Commerce Act, which forbids discrimination against connecting common carriers, including common carriers by water.

C. The discrimination against the appellee barge lines, under section 3 (4) of the act, is in contravention of the declared policy of the Congress, as expressed in the Transportation Act of 1940, to preserve the inherent advantage of water transportation, and is thus distinguishable from the discrimination made in connection with the general grain rate structure as involved in *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534.

D. The circumstances under which grain is transited in Chicago (see *Atchison, Topeka & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 777–780; *Board of Trade of Kansas City* v. *United States, supra*) are such as to make these barge lines connecting common carriers by water with the eastern railroads which reship grain from

Chicago to eastern destinations. Physical connection between the large lines and the eastern rail lines is not necessary to establish this relationship. See *Chicago, I. & L. Ry.* v. *United States*, 270 U. S. 287, 293; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144; *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co.* (C. C. Ga. 1896) 74 Fed. 522. It has been held to be a violation of section 3 (4) of the act for a rail line to charge more for traffic brought to the reshipping point by one carrier than that brought by another. *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co., supra; Cutting* v. *Florida R. etc. Co.*, (C. C. Fla. 1887) 30 Fed. 663; *Chattanooga Packet Co.* v. *I. C. R. R.*, 33 I. C. C. 384.

E. The order of the Commission fails to make basic and essential findings relating to the application of section 3 (4) of the act and of the declared policy of the Congress to preserve the inherent advantage of water transportation. The order is, therefore, not in accordance with law. *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 55; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 489; *Howard Hall Co., Inc.* v. *United States*, 315 U. S. 495, 500; *Mitchell* v. *United States*, 313 U. S. 80; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 165–166; and *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247.

ARGUMENT

I. THE DISCRIMINATION AGAINST EX-BARGE GRAIN RESULTING FROM ITS UNCONDITIONAL EXCLUSION FROM THE PROPOSED SCHEDULES AS COMPARED WITH THE UNCONDITIONAL INCLUSION OF THE EX-LAKE AND EX-RAIL GRAIN IS WITHOUT PRECEDENT IN PRIOR COMMISSION ACTION

The appellant rail carriers, in making the proposal to cancel the reshipping rates on the ex-barge grain and, to some extent, the Commission in approving the proposal, point to certain features of asserted unorthodoxy about the reshipping rates on ex-barge grain such as (a) they have never been applied so as to protect the local rail rates from Chicago which are higher than the barge-rail rates; (b) there is no arrangement between the barge lines and the eastern rail carriers for continuous movement; (c) the barge rates are not on file with the Commission; (d) the transit rules cannot be fully complied with; and (e) the barge lines are not common carriers.[10]

It took almost seven years for these criticisms to rise to the surface, and the eastern rail carriers, while not averse to having these features of the reshipping rates aired by the western rail carriers, were not themselves disposed to suggest invalidity. The consternation that was caused by the holding of invalidity by Division 2 of the Commission was

[10] See Section I, par. I, of this Brief under "Statement of Case."

allayed by the contrary holding of the Commission sitting as a whole.[11] It dawned upon all alike that any other view would do violence to the continuation of the reshipping rates on the indistinguishable ex-lake grain in the instant case and to a host of other similar reshipping rates not involved in this case.

The ex-lake grain and all ex-rail grain, including ex-rail grain which competes with the ex-barge grain, would continue, under the proposal, in the full and unabated enjoyment of the reshipping rates which are proposed to be denied to the ex-barge grain. The new schedules do not require that the ex-lake grain shall be by common carriers, or on rates filed with the Commission, or that the local rate shall be protected. Nor is there any requirement that there shall be an arrangement for through movement.

The unconditional inclusion of the ex-lake grain stands in striking contrast with the unconditional exclusion of the ex-barge grain. Nothing that the ex-barge grain might do would entitle it under the proposal to the benefit of the reshipping rates. The fact that two of the barge lines, appellees herein, are recognized common carriers by water and have filed their port-to-port rates with the Commission would avail them nothing. Barge lines may make all sorts of arrangements for through movement

[11] See Section I, par. D, of this Brief under "Statement of Case."

and still be excluded, and they could not protect the local rate if they wanted to.[12] The barge-rail rates under the new schedules would more than protect the local rate. They would exceed the local rate by the amount of the rate on the inbound barge haul.[13]

The adoption of the new schedules would mean that the higher local rates from Chicago would become applicable to the reshipment of ex-barge grain by rail. The local rail rates from Chicago are higher than the reshipping rail rates therefrom by 8.5 cents to points in trunk-line territory and by 1.5 cents to 7.5 cents to points in central territory, resulting, under the proposal, in a corresponding increase in barge-rail combination rates from points of origin to points of destination.[14]

The record is clear that the local rates out of Chicago are so much higher than the reshipping rates that grain cannot move on such rates in competition with that which is entitled to the reshipping rates, and that this will tend to divert traffic in grain from the Illinois Waterways to the competitive rails. Producers of grain are paid the Chicago price less the cost of the in-bound transportation. It follows that farmers whose grain can be trans-

[12] See Section I, par. I, of this Brief under "Statement of Case."

[13] See Section I, par. H, of this Brief under "Statement of Case."

[14] See Section I, par. H, of this Brief under "Statement of Case."

ported by barge receive the benefit, in the prices paid to them, of the low barge rates, and that this benefit does not go to the Chicago operators. For this reason, the ex-barge grain has exactly the same value in the elevators in Chicago as the ex-lake or ex-rail grain, and naturally it will not be moved east-bound by rail on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates. Grain is bought by the Chicago operator and is shipped to Chicago without knowledge of where it will go after it reaches Chicago. This is true of practically all grain shipments to primary markets, and the through transportation which is reflected in reshipment rates therefrom is to this extent fictional. The low barge rates cannot be used by the elevator operators in Chicago to offset the higher level of the local rates as compared with the reshipping rates. Under the proposed schedules the only outlet for ex-barge grain from Chicago would be by lake. There are many eastern destinations which cannot be reached by lake, and the movement by lake may only take place during the seven months of open lake navigation. The Chicago operators, upon finding that the ex-barge grain cannot be handled with the same facility as the ex-rail grain, would either cease to buy ex-barge grain, or buy the same only at a discount.[15] The

[15] See Section I, sub-pars. D-1, F, G, H, and K of this Brief under "Statement of Case," including dissenting report of Chairman Eastman of the Commission (R. 70-71; 248 I. C. C. 307, 320-321).

realization by producers that there would no longer be any advantage in shipping their grain to Chicago by barge will be the opening wedge for the diversion of traffic in all grain from the Illinois Waterways to the competitive interstate rails. The advantage will then be with the rails because of the more rapid transit which they can furnish. Thus the producer would lose the benefit of low-cost barge transportation over the Illinois Waterways.

The finding of the Commission to the effect that the cancellation of the reshipping rates on the ex-barge grain would not *prohibit* the reshipment of such grain is not material to the argument made in this brief and also has doubtful support in the record. The eastern rail carriers, in referring in their brief to this finding, state (p 80) that while the finding "may not have been established beyond all reasonable doubt," it was established as a "reasonable presumption." This is tantamount to an assertion that the proposal will not reduce traffic in grain on the waterways and is wholly irreconcilable with the stated purpose of such carriers to assist the western rail carriers in the desire of the latter to regain the tonnage in grain which has been lost by them to the barges. The eastern carriers are now transporting from Chicago their share of all grain which comes into Chicago, including the ex-barge grain. The realization on their part that they would lose the barge tonnage, as such, upon the adoption of the sched-

ules to cancel the reshipping rates thereon, now maintained by them, is accompanied by their definite expectation that this loss would be recouped co-extensively with the increase in traffic in grain over the western rails which is contemplated would take place upon the adoption of the schedules. The rail carriers would be greatly disappointed in their expectation if, by any chance, this diversion of traffic did not take place."[18]

The rail carriers urged, and the Commission found, that the continuation of the reshipping rates on ex-barge grain would tend to disturb the general grain rate structure. This disturbance is attributed to the mere circumstance that to destinations in trunk-line territory the present barge rail rates are lower than the local rail rates from some rail origins in Illinois, Indiana, and Ohio, nearer to such destinations than the ex-barge grain is upon its arrival in Chicago. The record leaves this tendency to disturbance in a highly conjectural state. At present, there is neither preference to the barge shipper nor prejudice to the non-barge shipper, and no shipper of the latter class is present to espouse the cause of the rail carriers.

The Commission, and this Court, in *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, have already expressly approved a grain rate

[18] See Section I, par. D-1, of this Brief under "Statement of Case."

structure in which there are many discriminations based upon the fact that in certain circumstances a long haul over the same route will have a lower rate than a shorter haul. A discrimination of this character has thus not heretofore been regarded as, in itself, a discrimination which would break down the grain rate structure. The Commission's finding in the case at bar is wholly immaterial to the question presented for decision here in any event, inasmuch as the Court must here decide not whether the Commission may discriminate, but in what manner the Commission may discriminate. If the Transportation Act of 1940, as hereafter argued, prohibits the Commission from approving a rate which discriminates against a water carrier for the sole purpose of preventing the water carrier from retaining low-cost advantages inherent in that form of transportation, the mere fact that such a discrimination is thought by the Commission to be necessary or desirable cannot justify its approval.

The proposal of the rail carriers to cancel the reshipping rates on the ex-barge grain and to apply to such grain the higher local rail rates out of Chicago with the continuation of the reshipping rates as to the ex-lake and the ex-rail grain is so discriminatory in its effect as to involve several sections of the act, namely, section 1 (5) (a), relating to unreasonable rates; section 2, relating to the unjust discrimination in charging one person

more than another for a like service; section 3 (1), making it unlawful to subject any particular person or place to any undue prejudice; and section 3 (4), forbidding discrimination against connecting common carriers, including common carriers by water. However, the argument in this brief will relate specifically only to that aspect of the case which involves the application of section 3 (4) of the act in the light of the national transportation policy to preserve the inherent advantage of water transportation.

II. THE COMMISSION, IN APPROVING THE PROPOSED SCHEDULES, FAILED TO GIVE EFFECT TO SECTION 3 (4) OF THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT OF 1940

The charge made by the Inland Waterways Corporation (Federal Barge Lines) and the Mechling Barge Line, appellees herein, to the effect that the proposed schedules would result in a discrimination against them, as connecting common carriers by water, under section 3 (4) of the act, is not adequately disposed of by the Commission in its report.

The appellee barge lines strongly urged the Commission by petition to give them a rehearing. The petitions for rehearing called the attention of the Commission to the fact that these lines had become subject to the jurisdiction of the Commission under the Transportation Act of 1940, and that they had filed their port-to-port rates with

the Commission between the time of the conclusion of the hearing before the Examiner for the Commission and the report of the Commission sitting as a whole. The petitions were overruled with the observation by the Commission that it would take official notice of the filing of such rates (248 I. C. C. 307, 308).

The question whether each of the appellee barge lines is such a connecting common carrier by water as is contemplated by section 3 (4) of the act is discussed in the brief of the eastern rail carriers (pp. 54–60). These carriers contend that the barge lines are not connecting carriers for the reason that there is no "through route" for the shipment of ex-barge grain through Chicago to eastern destinations. It is recognized by the Commission that the physical carriage beyond the reshipping point is substantially the same whether the grain is ex-rail or ex-barge (248 I. C. C. 307, 311), and it is conceded by the eastern rail carriers in their brief (pp. 54–60) that a physical connection between their rails and the barge lines is not necessary to constitute a connecting carrier relationship. See also *Chicago, I. & L. Ry.* v. *United States*, 270 U. S. 287, 293; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144; *Augusta Southern R. Co.* v. *Wrightsville, etc., R. Co.* (C. C. Ga. 1896), 74 Fed. 522. The circumstances under which grain is transited at Chicago would seem to make all ex-lake, ex-rail, and ex-

barge traffic therein that of connecting carriers. In-bound grain from one origin is commingled with grain from other origins in Chicago elevators at a time when it is not known just what disposition will be made of any part of the grain. To engage the reshipping rates, it is not necessary to identify the particular lot of inbound grain. This Court has had occasion to take notice of the manner in which grain is transited at important gateways. *Atchison, Topeka & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 777–780; *Board of Trade of Kansas City* v. *United States, supra.* Under the proposed schedules, the ex-barge grain could move out of Chicago by rail only at the local rates which are higher than the reshipping rates applicable to ex-lake and ex-rail grain.

It has been held that it constitutes a violation of section 3 (4) of the act for a carrier to charge more for traffic brought to the reshipping point by one carrier than that brought by another; *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co., supra; Cutting* v. *Florida R. etc. Co.* (C. C. Fla. 1887), 30 Fed. 663; *Chattanooga Packet Co.* v. *I. C. R. R.*, 33 I. C. C. 384.

The report of the Commission does not refer in any way to the declared policy of the Congress to preserve the inherent advantages of water transportation. The Transportation Act of 1940, laying down this policy, was enacted during the course of the proceedings before the Commission. The

appellee barge lines and other protestants petitioned the Commission for a rehearing in order that this policy might be taken into consideration by the Commission.

It has been shown that the schedules proposed by the eastern rail carriers, and approved by the Commission, would inevitably divert traffic in grain from the Illinois Waterways to the competing rails of the intervening western rail carriers despite the lower cost of the water transportation and that this diversion is the hope of the rail carriers. The inherent advantage not only, but the very existence of water transportation is at stake. The declared policy of the Congress is to preserve this advantage.

The rail carriers make no secret of their antipathy toward any water transportation that tends to take business away from the rails and they avow their purpose to stand together in a determined effort to drive the grain off the waterways onto the rails. The schedules proposed by them as necessary for the preservation of the general grain rate structure clearly involve, as intended by them, a destruction of the traffic in grain on the Illinois Waterways.[17] It is asserted by the eastern rail carriers in their brief (p. 65) that the inherent advantage of water transportation is "not necessarily paramount * * * to the protection of an

[17] See Section I, par. D-1, of this Brief under "Statement of case."

extensive rate adjustment on important [rail] traffic".

To preserve in this case the inherent advantage of water transportation would not inflict injury on persons whose geographical location is such as to put the advantage out of their reach. Moreover, all the advantage in transportation is not with the water. Many times it is a choice between slow transit at low cost and rapid transit at high cost. The low cost of water transportation inevitably affects rail traffic, but this constitutes no good reason for making changes in rail rates for the sole purpose of destroying the water traffic. Vigilance is required lest the inherent advantage of water transportation be whittled away.

The Transportation Act of 1940 charges the Commission with the duty of so administering the provisions of the Interstate Commerce Act as to preserve the inherent advantage of each mode of transportation and the legislative history of the act emphasizes the need for preserving the advantage of water transportation. The eastern rail carriers say that this has been the policy of the Congress for a long time (Eastern rail carriers' brief p. 60). Even so, it appears that the Congress felt the necessity of reiterating the policy at a time when it was subjecting common carriers wholly by water to the jurisdiction of the Commission for the first time.

In the conference report of the Senate and House of Representatives on the Transportation

Act of 1940 (H. R. 2016, 76th Cong. 3d Sess., p. 82), it was stated that while heretofore water transportation, with limited exceptions, "has not been within the fostering care of interstate regulation," the act will place upon the Commission "not only the power, but also the duty, to protect and foster water transportation and preserve its inherent advantages." The legislative history of the act shows that those in charge of the bill in the Senate and House recognized that the outstanding inherent advantage of transportation by water was its low cost and that this advantage was to be preserved.

The following colloquy took place on the floor of the Senate between Senator Wheeler, chairman of the Senate Commerce Committee, and Senator Lucas (84 Cong. Rec., p. 5879):

> Mr. LUCAS. Returning to the previous discussion with respect to control of inland waterways, I will say to the Senator that I live in the Illinois Valley. We have transportation upon the Illinois River between Chicago and St. Louis and on down the Mississippi to New Orleans. The town in which I live is a focal point for the transportation of wheat and corn down the Illinois. The price of wheat and corn at the elevator there is always 2 or 3 cents higher than it is at elevators some 25 or 30 miles farther inland because of the difference between the rates by rail and those by water.

> Under the bill, as I understand it, the Interstate Commerce Commission would have the power, and it would be its duty, to fix rates on the Illinois River with respect to the transportation of that wheat and corn. Would it be possible for the Interstate Commerce Commission to fix the rate the same as the railroad rate from that point to St. Louis?
>
> Mr. WHEELER. Not if the Commission does its duty, because the bill specifically provides that it must take into consideration the inherent advantages of the water carrier. Everyone agrees that goods can be shipped more cheaply by water than by rail.

Congressman Halleck, a member of the subcommittee of the House Committee on Interstate and Foreign Commerce, in an explanation of the bill before the House, said:

> * * * This Government has spent millions and hundreds of millions of dollars to develop cheap economical transportation. No one would be so ridiculous as to seek to destroy this investment. The communities served by this transportation have a right to the continuation of this service. There is nothing in the bill which seeks to destroy that service. Rail transportation is the most valuable transportation because it is faster and more convenient. The water people will admit that. If a person had the same rate he would ship by rail rather than

water. As a result the ceiling of rates is fixed by the railroads. The water carriers operate under that ceiling at a competitive point because their costs are less. The bill recognizes that differential and the reason supporting it. This bill provides for the continuation of that differential. I might refer you to the provisions of the bill but I do not want to take the time necessary to read them.

The declaration of policy demands of the I. C. C. that it administer this act to recognize and preserve the inherent advantages of each type of transportation (84 Cong. Rec., p. 9711).

* * * * *

I would just like to say about that question that if anyone can find in the hearts or the minds of any of us who have worked on this bill any intent or determination to take from the country the benefits of cheap transportation, I fail to see it. I have said time and again here and to the country that there were proposals coming from different sources that would have done that but we refused to accept them. The very declaration of policy requires the Interstate Commerce Commission to say to the country whatever benefits of cheap transportation we have. I would be the last person to say that after we have spent all this money to develop water transportation we ought to throw it away. * * * (68 Cong. Rec., p. 10187. For similar state-

ments see also 84 Cong. Rec., pp. 5951, 6127, 8662-63; 86 Cong. R[illegible]., p. 5878).

In explaining the meaning of the inherent advantage of water transportation, Senator Wheeler and Congressman Halleck stated as follows:

> Senator WHEELER. When the bill speaks of inherent advantages of the shipping interests, it refers to carriers which can transport at a cheaper rate because they can ship by water, by way of canals and the ocean, so they have natural advantages, and they do not have the expense of the upkeep of the rights-of-way, as railroads do (84 Cong. Rec., p. 6127).
>
> Congressman HALLECK. I think it has a very definite meaning. To me it means a recognition of the rights of the country to cheap and economical transportation by water, that there are certain advantages inherent in that type of transportation and that these advantages shall be preserved to the people of this country. I think you cannot read anything else into it * * * (84 Cong. Rec., p. 9711).

The concluding sentence in the policy section of the act reading "All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy" was added to this section pursuant to an amendment made in the House in order to give assurance that the policy thus declared by the Congress would be effectuated (84 Cong. Rec., pp. 9861–66).

III. AN ORDER OF THE INTERSTATE COMMERCE COMMISSION MAY BE SET ASIDE WHERE THE COMMISSION HAS PROCEEDED UPON A MISTAKEN VIEW OF LAW, OR HAS FAILED TO MAKE BASIC FINDINGS

In issuing the order now under consideration, the Commission, for aught that appears in its report of findings, did not view with importance the complaint of the appellee barge lines that the schedules would constitute a discrimination against them as common carriers by water under section 3 (4) of the act. The issue was one which clearly called for special consideration of the application of section 3 (4) in the light of the declared policy of the Congress to preserve the inherent advantage of water transportation.

This Court frequently finds it necessary to invoke the clearly declared policy of the Congress in the interpretation and application of regulatory legislation, and requires no less of agencies charged with the duty of administering such legislation. *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 55. A clearly declared policy of the Congress gives the measure of delegated authority to such agencies. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 165–166.

The Commission is required not only to apply the governing law and policy but to make appropriate findings in order that judicial review may be effective. *United States* v. *Carolina Freight*

Carriers Corp., 315 U. S. 475, 489; *Howard Hall Co., Inc.* v. *United States*, 315 U. S. 495, 500; *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247. See also *Mitchell* v. *United States*, 313 U. S. 80.

CONCLUSION

It is respectfully submitted that the order of the Commission is not in accordance with law and that the decree of the district court should be affirmed.

Respectfully submitted.

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APPENDIX

IMMEDIATELY PERTINENT PROVISIONS OF INTERSTATE COMMERCE ACT

Act September 18, 1940, c. 722, Title 1, Section 1, 54 Stat. 899, Title 49, U. S. C., preceding Section 1:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 1, Paragraph (5) (a) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 1 (5) (a)):

> (5) (a) All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 2 of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 2):

> SEC. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3, Paragraph (1) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 3 (1)):

> (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corpora-

tion, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage, to the traffic of any other carrier of whatever description.

Section 3, Paragraph (4) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 3 (4)):

(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

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